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March 5, 2003

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
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Washington, D.C. 20554

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MAR - 5 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Application by SBC Communications Inc., et al., for Provision of In-Region,
InterLATA Services in Nevada, WC Docket No. 03-10

Dear Ms. Dortch:

Accompanying this letter are the Supplemental Track A Reply Comments of SBC Communications Inc. ("SBC"). Because this filing contains confidential information, we are filing both confidential and redacted versions. Specifically, this reply filing includes:

- a. One original of the portions of the filing that contain confidential information;
- b. One original and four copies of the filing, redacted for public inspection; and
- c. Five diskette copies of the filing, redacted for public inspection.

Under separate cover, SBC is providing copies of this filing (redacted as appropriate) to Tracey Wilson, Policy and Program Planning Division, Wireline Competition Bureau, Federal Communications Commission, Room CY-B-402, 455 12th Street, S.W., Washington, D.C. 20544. SBC is also providing electronic copies (redacted as appropriate) to the Department of Justice, the Public Utilities Commission of Nevada, and Qualex (the Commission's copy contractor)

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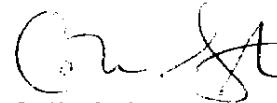
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Thank you for your assistance in this matter.

Yours truly,



Colin S. Stretch

Encs

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Before the
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Application by SBC Communications Inc.,
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Southwestern Bell Communications Services,
Inc. for Provision of In-Region, InterLATA
Services in Nevada

WC Docket No. 03-10

**SUPPLEMENTAL "TRACK A" REPLY COMMENTS OF
SBC COMMUNICATIONS INC.**

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TABLE OF SECTION 271 ORDERS

<i>California Order</i>	Memorandum Opinion and Order, <i>Application by SBC Communications Inc., et al. for Authorization To Provide In-Region, InterLATA Services in California</i> , WC Docket No. 02-306, FCC 02-330 (rel. Dec. 19, 2002)
<i>Kansas/Oklahoma Order</i>	Memorandum Opinion and Order, <i>Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd 6237 (2001), <i>remanded in part, Sprint Communications Co. v. FCC</i> , 274 F.3d 549 (D.C. Cir. 2001)
<i>Michigan Order</i>	Memorandum Opinion and Order, <i>Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan</i> , 12 FCC Rcd 20543 (1997)
<i>Missouri/Arkansas Order</i>	Memorandum Opinion and Order, <i>Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri</i> , 16 FCC Rcd 20719 (2001), <i>aff'd, AT&T Corp. v. FCC</i> , No. 01-1511, 2002 WL 31558095, 50 Fed. App. 453 (D.C. Cir. Nov. 18, 2002)
<i>Oklahoma Order</i>	Memorandum Opinion and Order, <i>Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide in-Region, InterLATA Services in Oklahoma</i> , 12 FCC Rcd 8685 (1997)
<i>Second Louisiana Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corporation. et al., for Provision of In-Region, InterLATA Services in Louisiana</i> , 13 FCC Rcd 20599 (1998)
<i>South Carolina Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina</i> , 13 FCC Rcd 539 (1997), <i>aff'd, BellSouth Corp. v. FCC</i> , 162 F.3d 678 (D.C. Cir. 1998)

Vermont Order

Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Vermont*, 17 FCC Rcd 7625 (2002), *appeal dismissed, AT&T Corp. v. FCC*, No. 02-1152, 2002 WL 31619058 (D.C. Cir. Nov. 19, 2002)

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**SUPPLEMENTAL “TRACK A” REPLY COMMENTS OF
SBC COMMUNICATIONS INC.**

INTRODUCTION AND SUMMARY

SBC Communications Inc. (“SBC”) submits these supplemental Track **A** reply comments in accordance with the Commission’s second public notice in this docket.’ Both the Application and SBC’s Track **A** Reply’ demonstrated that Nevada Bell Telephone Company (“Nevada Bell”) faces competition for residential customers from wireline competitors, from a broadband PCS provider, and from resellers, and both established that each of these categories of “competing providers” satisfies the Track **A** requirement that competitors provide “telephone exchange service . . . to residential . . . subscribers.” 47 U.S.C. § 271(c)(1)(A). **As** it was in the earlier stages of this proceeding, WorldCom is the only party to dispute this showing.’ Yet, although

¹ Public Notice, *Comments Requested Regarding SBC’s Track A Reply Comments in Connection with SBC’s Pending Section 271 Application*, DA 03-461, WC Docket No. 03-10 (Feb. 14, 2003) (“**TrackA Public Notice**”).

² *See* “Track **A**” Reply Comments of SBC Communications Inc., WC Docket No. 03-10 (filed Feb. 14, 2003) (“SBC Track A Reply”).

³ *See* Track **A** Comments and Reply Comments of WorldCom, Inc. on the Application By SBC for Authorization to Provide In-Region, InterLATA Service in Nevada, WC Docket No. 03-10 (filed Feb. 26, 2003) (“WorldCom Reply”).

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WorldCom has now had two full opportunities to rebut SBC’s showing, it has failed to call into question even a single one of the categories on which SBC relies, much less all three.

DISCUSSION

I. SBC SATISFIES TRACK A IN NEVADA.

Track **A** requires SBC to establish the existence of “competing providers of telephone exchange service . . . to residential and business subscribers” in Nevada. 47 U.S.C. § 271(c)(1)(A). SBC’s showing with respect to “business subscribers” remains undisputed; the only question at issue is whether “competing providers” also serve residential subscribers in Nevada Bell’s serving area. As SBC has demonstrated, “residential subscribers” in Nevada Bell’s serving area are *in fact* receiving service from competing wireline providers, from a competing broadband PCS provider, and from competing resellers. Each of these categories of “competing providers,” standing alone, is sufficient to satisfy Track **A**. Taken together, they make unmistakably clear that Nevada consumers have an “actual commercial alternative” to Nevada Bell’s wireline service. *E.g., Vermont Order* ¶ 11.

UNE-P and Facilities-Based Wireline Competition. SBC’s residential Track **A** showing relies first and foremost on the wireline carriers that are providing UNE-P and facilities-based service to residential subscribers in Nevada Bell’s serving area. *See* SBC Track **A** Reply at 5-8. Each of these carriers serves more than a *de minimis* number of customers as that standard has been applied in previous section 271 decisions, and each of them accordingly qualifies as a “competing provider” for purposes of Track A. *See id.*

WorldCom describes SBC’s reliance on these carriers as “nothing short of shocking.” WorldCom Reply at 5. The basis for this outrage appears to be the fact that, when one of WorldCom’s lawyers contacted the companies on which SBC relies, he was told that neither

offers residential service in Nevada today. But, as SBC has demonstrated twice in this proceeding⁴ – and as no party (not even WorldCom) has disputed – these carriers are *in fact* providing service to residential customers in Nevada Bell’s serving area. It is therefore clear that, when real residential customers contacted these CLECs requesting real residential service, they received a very different answer than the one WorldCom claims to have received.

In any event, as SBC explained in its Track A Reply Comments (at 7-8), the Commission has already held that, for Track A purposes, these carriers’ current marketing plans are beside the point. As the Commission has explained, where a “relatively established competitive provider” has demonstrated that it can compete in the market, “it would be unfair and inconsistent with the statute” to base its status as a Track A carrier on its “marketing decision” to cease offering service at a particular point in time. *Missouri/Arkansas Order* ¶ 119. SBC has already established that both *** and *** are “relatively established competitive provider[s].” See SBC Track A Reply at 7 & n.3. WorldCom’s lawyer’s contention that these carriers do not presently market residential service in Nevada is therefore irrelevant.

⁴ See J.G. Smith Aff. ¶ 12 & Attach. D (App. A, Tab 19); J.G. Smith Reply Aff. ¶¶ 4-6, 8 & Attach. E. WorldCom asserts that SBC’s characterization of one of these CLECs (*** ***) “changed” between the Application and the SBC Track A Reply. See WorldCom Reply at 3. That is not so. Both the Application and the SBC Track A Reply make clear that SBC relies upon the residential white pages listings of this CLEC’s customers to establish that it provides service to residential subscribers. See J.G. Smith Aff. Attach. D; SBC Br. at 9 n.4; J.G. Smith Reply Aff. Attach. E. To be sure, as WorldCom appears to recognize (Reply at 3-4), both the Application and the SBC Track A Reply *also* rely upon this ~~carrier’s resold~~ lines to residential customers. See J.G. Smith Aff. ¶ 13; J.G. Smith Reply Aff. ¶ 7. That additional competition, of course, only confirms this carrier’s status as a “competing provider” of service to “residential subscribers.” See, e.g., *Kansas/Oklahoma Order* ¶ 43 n.101 (holding in the alternative that SBC satisfied Track A on the basis of facilities-based competitors’ resold offerings to residential subscribers).

WorldCom contends that this understanding of Track A – *i.e.*, the one the Commission adopted in the *Missouri/Arkansas* Order – “read[s] Track A out of the statute,” because “th[e] same argument could be made if no CLECs served any customers in the state.” WorldCom Reply at 2. That is not so. In both the *Missouri/Arkansas* Order and elsewhere, the Commission has consistently focused on whether a carrier is *actually providing* service – *i.e.*, whether it is in fact “serv[ing] any customers in the state.” See, *e.g.*, *Missouri/Arkansas* Order ¶ 118 (“a sufficient number of residential customers *are being served*” by competitors to satisfy Track **A**) (emphasis added); *Michigan* Order ¶ 80 (asking whether certain CLECs “are providing ‘telephone exchange service . . . to residential and business subscribers’”) (emphasis added) (quoting 47 U.S.C. § 271(c)(1)(A)); accord H.R. Rep. No. 104-458, at 148 (1996) (the competitor qualifies for purposes of Track **A** if “the competitor has implemented the agreement and the competitor is operational”). Because both *** and *** are in fact providing service to residential customers in Nevada Bell’s serving area, both qualify as “competing providers” under the statute and Commission precedent.

To rebut SBC’s showing of residential competition, WorldCom also points to the Commission’s suggestion in the *Oklahoma* Order that a CLEC that “‘is not even accepting requests . . . for . . . service’” does not count as a “competing provider” under Track **A**. WorldCom Reply at 3 (*quoting Oklahoma* Order ¶ 20). But WorldCom wholly ignores the context in which the Commission made that suggestion. In *Oklahoma*, the CLEC in question was “provi[ding] . . . local exchange service on a test basis, at no charge, to the homes of four of its employees,” and it had accordingly not yet developed a “practical” commercial offering, *Oklahoma* Order ¶¶ 17, 20. The Commission rejected that showing, stressing that, “for the purposes of [Track A], the *competing* provider must actually be in the market, and, therefore,

beyond the testing phase.” *Id.* ¶ 17; *see also South Carolina Order* ¶ 57 (reading the *Oklahoma Order* to require that a Track A carrier be “operational”). Here, of course, both wireline carriers upon which SBC relies are actually in the market, both are beyond the testing phase, and, even assuming that neither is presently accepting requests for service, both have plainly accepted such requests in the past. The showing on which SBC relies here thus fits comfortably within the Commission’s precedents and is far removed from the showing rejected in the *Oklahoma Order*.

Finally, with respect to one of the two wireline carriers on which SBC relies (***
***), WorldCom notes that several of its customers receive service over a DSI facility and that others have multiple loops, and it asserts – without any support whatsoever – that such service “can hardly be considered residential service.” WorldCom Reply at 4. But a customer’s decision to take service over a high-capacity facility or multiple loops – while suggesting that the customer probably receives multiple product offerings, including data service – in no way suggests that these offerings do not include residential telephone exchange service. And, in any event, Track A merely requires a showing that a CLEC provides “telephone exchange service . . . to residential . . . subscribers.” 47 U.S.C. § 271(c)(1)(A). Thus, contrary to WorldCom’s apparent understanding, it is the type of subscriber that matters for purposes of Track A. The specific subscribers SBC has identified in this proceeding (*see* J.G. Smith Reply Aff. Attach. E) are plainly “residential subscribers,” and they are equally plainly receiving “telephone exchange service” from *** *** *** *** thus qualifies as a “competing provider” under the plain language of the statute, regardless of the fact that its services often are provided over a high-capacity facility or multiple loops.

Broadband PCS Competition. SBC’s residential Track A showing also relies on broadband PCS provider Cricket Communications, Inc. (“Cricket”). As SBC demonstrated in

the Application, and as the Affidavit of Keith Frederick submitted with SBC’s Track A Reply confirms, Cricket is successfully marketing its service as a landline replacement in Nevada Bell’s serving area, and it accordingly qualifies as a “competing provider” for purposes of Track A. *See* J.G. Smith Aff. ¶¶ 14-21; Frederick Aff. ¶¶ 8-24 & Attach. C.

WorldCom briefly challenges Mr. Frederick’s conclusions, primarily on the theory that the survey he oversaw was confusing. *See* WorldCom Reply at 6. According to WorldCom, the key question in Mr. Frederick’s survey was whether respondents “‘have wireline local telephone service in [their] home,’” and, in its view, “it is not safe to assume” that respondents understood the term “‘wireline.’” *Id.* (quoting Frederick Aff. ¶ 11 & Attach. B at 2). As Mr. Frederick’s affidavit makes clear, however, respondents that were “unsure” of “what ‘wireline local telephone service’ means” were provided the following definition:

By wireline local telephone service we mean dial-tone phone service provided by your local phone company that allows you to make and receive phone calls by plugging your home phone into a wall-jack.

Frederick Aff. ¶ 11 n.5 & Attach. B at 2. WorldCom does not, because it cannot, find fault with this definition. It is accordingly clear that those respondents who did not understand the term “wireline” were provided clarification.

More importantly, WorldCom ignores the fact that respondents who indicated they did **not** have “wireline” phone service in their homes were asked a follow-up question:

Did you previously have in your home, wireline local telephone service that was disconnected or terminated because you decided to have a Cricket phone?

Frederick Aff. ¶ 11 & Attach. B at 2. Respondents that answered “yes” to this question obviously understood what the term “wireline local telephone service” means; otherwise, they would have been unable to state that they had “disconnected” or “terminated” such service. And.

critically, it is the respondents who answered “yes” to this follow-up question upon which SBC relies here. *See* Frederick Aff. ¶¶ 21-22; SBC Track A Reply at 10-11. There is therefore no credible basis on which to argue that the bottom line of Mr. Frederick’s testimony – that approximately 2,842 Cricket customers are using their broadband PCS service as a replacement for residential wireline service, *see* Frederick Aff. ¶ 22 – is unreliable.

WorldCom next contends that, to qualify as a “competing provider” for purposes of Track A, a broadband PCS provider must serve “a significant number” of customers who have substituted PCS for wireline service. WorldCom Reply at 6 (internal quotation marks omitted). But the *Second Louisiana Order*, which WorldCom claims established this “significant number” standard, in fact does no such thing. Instead, the portion of that order upon which WorldCom relies addresses (and rejects) evidence regarding whether “wireline exchange customers [are] likely *to consider* switching to PCS service based on price.” *Second Louisiana Order* ¶ 40 (emphasis added). SBC does not in this Application rely on such evidence; rather, it demonstrates that more than a *de minimis* number of customers *have in fact* switched to PCS service, a showing that falls comfortably within the standards set out in the *Second Louisiana Order*. *See id.* ¶ 31 (“We believe that the BOC must show that broadband PCS is being used to replace wireline service, not as a supplement to wireline.”).

In any event, even if the Commission were to require that a PCS provider serve “a significant number” of customers to qualify as a “competing provider” for purposes of Track A, Cricket satisfies that standard. **As** noted above and in SBC’s Track A Reply, estimated conservatively, approximately 2,842 Cricket customers are using Cricket as a replacement for

wireline service. Indeed, WorldCom does not dispute that this number of customers satisfies its “significant number” standard.⁵

Resale Competition. Finally. SBC’s residential Track A showing relies on the resellers in Nevada Bell’s serving area that provide service to approximately 1,300 residential customers. *See* J.G. Smith Aff. ¶ 13 & Attach. D. As SBC has explained, *see, e.g.*, SBC Track A Reply at 11-12, this reliance on so-called “pure” resellers fits squarely within the plain language of Track A, which permits a Bell company applicant to rely on a group of “competing providers” that collectively provides “telephone exchange service” to both “residential and business subscribers” predominantly over their own facilities “in combination with . . . resale.” 47 U.S.C. § 271(c)(1)(A).

Although it again characterizes SBC’s position as “shocking,” *see* WorldCom Reply at 8, WorldCom does not – presumably because it cannot – challenge SBC’s statutory analysis. Instead, WorldCom asserts that facilities-based competition is more important than resale, since a facilities-based competitor is more likely to be “committed to the state” and “will not so easily pull **up** stakes and exit the market as could a pure reseller.” *Id.* But, on that logic, WorldCom itself would not count for purposes of Track A in any of the states in which it has rolled out its UNE-P-based “Neighborhood” offering, since a UNE-P provider requires no facilities **of** its own

⁵ WorldCom again notes the recent decline in Cricket’s stock price, and it appears to argue that Cricket accordingly does not qualify as a “competing provider” for purposes of Track A. *See* WorldCom Reply at 7-8. WorldCom also notes – apparently without irony – that Cricket has been sued for allegedly making “false and misleading” statements about its financial condition. *See id.* It is unclear whether WorldCom – which itself is subject to numerous lawsuits stemming from its accounting irregularities – is suggesting that mere allegations in such lawsuits should be accepted at face value and construed as evidence in Commission proceedings. In any case, WorldCom’s speculation about Cricket’s ongoing viability is beside the point. As SBC has previously explained, the critical fact is that Cricket was in the market providing service at the time of the Application. Moreover, it remains there today.

and can accordingly “pull up stakes and exit the market” just as easily as a reseller. The Commission has already held, however, that service provided over UNEs counts for purposes of Track A, *see Michigan Order* ¶ 94, and WorldCom itself appears to recognize that, if it rolled out its “residential UNE-P service” in Nevada, it would qualify as a “competing provider” for purposes of Track A, *see WorldCom Reply* at ii.

In any case, SBC’s Track A showing does in fact rely on (real) facilities-based carriers. As we have previously explained, CLECs in Nevada have captured more than one in five business lines in Nevada Bell’s serving area, and the vast majority of these lines are served over CLECs’ own facilities. *See SBC Br.* at 7; J.G. Smith Aff. ¶¶ 10, 13 & Table 3. And, again, that substantial showing of facilities-based competition to “business subscribers,” considered “in combination with the resale of the telecommunications services of another carrier,” falls comfortably within the terms of Track A. 47 U.S.C. § 271(c)(1)(A); *see SBC Track A Reply* at 11-13.

Finally, WorldCom characterizes as “blatant overreaching or confusion” SBC’s reliance on the *Second Louisiana Order* and Chairman Powell’s April 1998 letter to Senator Brownback, both of which suggest that, if the requirements of the checklist are satisfied, the Commission should attempt to read Track A in a manner that permits approval of the Application. WorldCom Reply at 8-9; *see Second Louisiana Order* ¶ 48; Letter from the Hon. Michael K. Powell, FCC, to Senator Samuel D. Brownback, Attach. at 1 (Apr. 22, 1998). If there is any “confusion” in this regard, it is WorldCom’s. SBC’s Track A Reply relied on those sources not, as WorldCom contends, to suggest that it be permitted to offer interLATA services without satisfying Track A, but rather as support for its request that the Commission waive its procedural rules if and to the extent necessary to consider the evidence included with the Track A Reply. *See SBC Track A*

Reply at 16-17 (explaining that a waiver is appropriate because SBC’s Application is “‘otherwise persuasive and demonstrates a commitment to opening local markets to competition as required by the 1996 Act’”) (*quoting California Order* ¶ 30). Because WorldCom does not object to SBC’s waiver request (a matter we address further below), its objections to the sources SBC relied upon in support of that request are beside the point.

II. SBC’S TRACK A SHOWING COMPLIES WITH THE COMMISSION’S PROCEDURAL RULES.

SBC has explained that the evidence included with its Track A Reply, including the Affidavit of Keith Frederick, is offered to rebut arguments made by other commenters and therefore falls squarely within the Commission’s procedural rules. See SBC Track A Reply at 14-15. In the alternative, SBC requested that the Commission waive those procedural rules if and to the extent necessary to consider SBC’s Track A Reply showing, and it explained that such a waiver would be consistent with Commission precedent. *See id.* at 15-17.

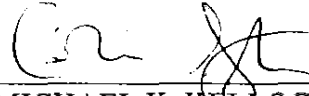
WorldCom does not dispute that all of the evidence SBC has offered in support of its Track A showing is properly before the Commission, nor does it dispute that, even if it were not, a waiver of the Commission’s procedural rules would be appropriate. WorldCom does, however, criticize SBC for purportedly failing to provide one portion of this evidence – the Affidavit of Keith Frederick – in time to permit “either [the Department of Justice (“DOJ”)] or the Nevada Commission to analyze it.” WorldCom Reply at 5. But the DOJ did in fact analyze the Frederick Affidavit, *see* DOJ Eval. at 7 & n.28, and, although it did not expressly rely on it in recommending approval of the Application, it did not suggest that it was in any way prevented from fully considering its relevance. As for the Public Utilities Commission of Nevada (“PUCN”) – which is already on record as enthusiastically supporting the Application – the

Commission’s *Track A Public Notice* sought comment on SBC’s Track A Reply from any and all “interested parties.” *See Track A Public Notice* at 2. If the PUCN thought SBC’s rebuttal evidence somehow undercut its prior, unequivocal endorsement of the Application, it had ample opportunity to say so. In view of the steps SBC took to provide its Track A rebuttal evidence well in advance of the deadline for filing reply comments in this proceeding, it cannot credibly be argued that the timing of SBC’s submissions have in any way limited any party’s ability to comment on SBC’s Track A showing or prevented this Commission from assembling a complete and comprehensive record.

CONCLUSION

SBC satisfies Track A in Nevada.

Respectfully submitted,



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March 5, 2003

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